No. 14463

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PHILLIP DAVISSON, WILLIAM DAVISSON, OSCAR SCHERRER AND WARNER SCHERRER, d/b/a SCHERRER AND DAVISSON LOGGING COMPANY, RESPONDENTS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
FREDERICK U. REEL,
PETER BAUER,
Attorneys,
National Labor Relations Board.

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JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*),[1] for the enforcement of its order issued against respondents on April 22, 1954, following proceedings under Section 10 of the Act. The Board's decision and order (R. 7–27)[2] are reported at 108 NLRB

[1] The relevant provisions of the Act are printed in the Appendix, *infra*, pp. 18–20.

[2] Reference to portions of the printed record are designated "R." Wherever a semicolon appears, the references preceding the semicolon are to the Board's findings; those following the semicolon are to the supporting evidence.

No. 75. This Court has jurisdiction of the proceeding under Section 10 (e) of the Act, the unfair labor practice having occurred within this judicial circuit at Granite Falls, Washington.[3]

STATEMENT OF THE CASE

I.

The Board's finding of fact

Briefly, the Board found that the respondents violated Sections 8 (a) (3) and (1) of the Act by discriminatorily refusing to hire Alex Cook in the spring of 1953 because of his previous participation in several strikes that had occurred at neighboring lumber camps. The subsidiary facts as found by the Board,[4] and as shown by the evidence, may be summarized as follows:

Alex Cook, a member of the International Woodworkers of America, CIO, Local 23–93, had been employed for the past several years as an experienced power saw operator by the W. R. W. Logging Company, and more recently by the Wilmac Logging Company (R. 9–10; 32, 36). Both companies, as well as the respondents, are located in the Granite Falls,

[3] Respondents constitute a partnership which has its principal place of business in Granite Falls, Washington. As contract loggers for Scott Paper Company, respondent in 1952 cut over seven and a half million feet of timber belonging to Scott Paper Company, all of which was converted into products moving in interstate commerce. The value of respondents' services in 1952 to the Scott Paper Company approximated $105,000. No jurisdictional question is presented, since respondents conceded that their operations affect commerce within the meaning of the Act (R. 9; 4, 7).

[4] The Board adopted, with certain additions, the findings of fact made by the Trial Examiner, and adopted without modification his conclusions and recommendations (R. 22).

Washington, area. A Mr. Mackie, one of the owners of Wilmac, is related by marriage to Oscar Scherrer, one of the respondent partners, and to the two operators of the W. R. W. Logging Company (R. 10; 37, 57, 94, 97).

During Cook's employment in the 1952 season, two strikes for lawful economic objectives were called at both the Wilmac and W. R. W. operations. The first, a strike for paid holidays and a health and welfare program, was part of an areawide dispute covering the northwestern States, and the second arose over local issues (vacation pay and union security) and did not end until 18 days before the end of the 1952 logging season (R. 10; 37–38, 50–51, 52–53). Cook not only participated in both strikes, but at the time of their occurrence was vice president of the Union's Granite Falls district, and the Union shop steward at Wilmac (R. 10; 37). On a later occasion (see *infra,* p. 7), respondent Oscar Scherrer informed Cook's brother-in-law that "he heard around the country that Alex Cook was the cause of all the strikes" (R. 13; 77).

Near the opening of the 1953 lumbering season the following March, Cook visited the home of respondent William ("Red") Davisson to apply for a job as a power saw operator with respondents (R. 10; 33–34). Davisson, who lived only one and a half miles from Cook, was responsible for the respondent firm's hiring, subject to the approval of the other partners (R. 38, 85). He informed Cook that this year he would not have a "crummie"—a truck transporting the lumber crew—running between Granite Falls and

the Sultan area, 52 miles away, where respondents planned to conduct their 1953 logging operations. Cook thereupon offered to drive his own car to Sultan (R. 10–11; 41, 42). At the conclusion of the conversation, Cook requested Davisson to let him know if he needed a man, and Davisson answered "O. K." (R. 11, 34, 87).

Being without a job, and not having been recalled by the Wilmac Logging Company, where he held seniority, Cook decided to log some of his own timber until such time as he could get employment (R. 12; 43, 49). To that end he applied on April 28 for a cutting permit, and he also made arrangements, together with his friend Delbert Rawlins, for the purchase of a "donkey"—a gasoline rig used in lumbering operations (R. 12; 43, 44–46).

Delbert Rawlins, like Cook, was a power saw operator and a union member, and had been a striker in the spring and fall of 1952 (R. 11; 54, 63). He was also at that time a member of the union committee (R. 63). Like Cook, he asked Davisson for a job in March or April of 1953 (R. 11; 55). At that time Davisson told him that after the rigging crew had been working for a while "they would need some more men" (R. 55–56). Sometime later in April, however, Davisson indicated to Rawlins that although he personally wanted Rawlins, he could not hire him "because of the union activity, because of that strike" (R. 11; 56). Davisson adverted to his partners, principally Oscar Scherrer, as well as to Mackie, Scherrer's father-in-law and owner of Wilmac Logging Company, as "the ones that insisted that

[Rawlins] not be hired" (R. 57). He added that "it looked to him that they were trying to starve [Rawlins] and Mr. Cook out" (R. 11; 57). Nevertheless, Davisson offered to go back and talk to his partners to see if they would not approve Rawlins' hire (R. 11; 57); he also asked Rawlins to waive his seniority rights held with his former employer, W. R. W. Logging Company,[5] a request which Davisson admitted he at no time made of Cook, although Cook, like Rawlins, retained seniority with the firm that had last employed him (R. 11; 53, 57–58, 66, 97).

Early in May both Cook and Rawlins again visited Davisson and applied for employment (R. 12; 34–35, 59–60). Rawlins, who had arrived first and stopped his car in Davisson's driveway, inquired about his job application status and was informed by Davisson that Oscar Scherrer said he could come to work (R. 59). Rawlins and Davisson also discussed the purchase by Rawlins and Cook of the gasoline donkey (R. 60, 65). A few minutes later Cook drove up and joined the conversation.[6] When Cook again asked if Davisson

[5] Although Rawlins had worked for respondent Company in 1950, 1951, and for a few days in 1952, he in fact held no seniority or rehire rights with respondents, but only with W. R. W. Logging Company (R. 54–55, 76).

[6] The Board amplified the Trial Examiner's report, which was silent on the point, by adding that Mrs. Davisson testified "without direct contradiction" that Cook did not get in Rawlins' car on this occasion (R. 22–23). Actually both Cook and Rawlins testified that Cook left his own car to join Davisson and Rawlins in the latter's car (R. 35, 44, 59). The Board's inadvertent error in describing Mrs. Davisson's testimony on this point as uncontradicted is immaterial, since it adopted in full the Trial Examiner's credibility findings regarding the substance of the conversation that took place (R. 22).

had a job for him, Davisson, although he had just offered employment to Rawlins, at first replied that "the snow was pretty deep yet," that "the rigging was still on," and "he didn't know how many men were coming back, so he wasn't sure" (R. 35–36, 59–60). Cook thereupon asked Davisson point blank if "it wasn't because of the trouble at the Wilmac, if they didn't have something to do with it." Davisson answered, "that is the whole damn thing" (R. 12; 36, 60).

Unable to get employment, Cook began to log his own land with the assistance of Rawlins.[7] Rawlins in turn declined the employment proffered him by respondents, informing Davisson a few days after their talk that as long as Cook did not have a job, he could not leave him alone (R. 12; 60).

In early June, Davisson, who was still in need of power saw operators, asked the Union's secretary-treasurer and business agent, Vernon Castle, whether any men were available (R. 12–13; 70). Apparently unaware at that time of Cook's rejected application, Castle told Davisson there should be some around Sultan (R. 13; 70). Some days later, Castle asked Davisson why Cook had not been hired, pointing out to him that the Union was going to file charges against respondents if Cook were not hired (R. 71). Davisson replied that "Cook was a good man [and] he would like to have him," but that there was no room for him on the "crummie," and for that reason he did

[7] By the time of the hearing in October 1953, Cook and Rawlins had also done some logging at the request of private individuals on timber other than Cook's own (R. 52).

not wish to hire any more men from Granite Falls (R. 23; 71). As a matter of fact, since May 6, 1954, after Cook's employment application had been rejected a second time, respondents hired no less than five employees who lived in the Granite Falls area. One of these was an old employee, and one was possessed of hard-to-find skills; but the other three employees, Stalnaker, Russell, and Treen, appeared to be new hands, each of whom, as respondent Davisson admitted, arranged to do their own driving to Sultan, just as Cook had proposed to do (*supra,* p. 4) (R. 23; 72–75, 92–93).

Among new employees hired by Davisson in June was Fred Roberts, Cook's brother-in-law. Shortly before hiring Roberts, Davisson told him in the course of a conversation which touched on Cook's union activity that he would like to hire Cook, but "his partners wouldn't let him" (R. 13; 78). After Roberts started working, partner Oscar Scherrer told him on two occasions that "he wouldn't hire Alex Cook because he was too active in the union," in one case specifically stating that "he was afraid if he hired Alex Cook that Alex would cause his men to go out on strike," and that he had "heard around the country that Alex Cook was the cause of all the strikes" (R. 13; 77, 78).

At the hearing, the respondents denied the substance of most of the conversations attributed to them, denied that union activity had anything to do with their refusal to hire Alex Cook, and variously took the position that their failure to employ Cook was due to their reluctance to hire new employees living

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at Granite Falls over 50 miles from their Sultan operations; to the fact that Cook was doing his own logging, and thereby had removed himself from the labor market; and lastly, to the fact that there existed an "agreement" or "relationship" among the interrelated owners of the several lumber companies in the area not to hire away each other's employees (R. 87, 92, 97). Respondents also resisted the charge of discrimination by showing that their operations were one hundred percent unionized, that they had a current contract with the Union, and that most of the partners were former union members.

II.

The Board's conclusions and order

On the foregoing facts the Board concluded that respondents refused to hire Cook because of his participation in strike activity, thereby discouraging membership in a labor organization in violation of Section 8 (a) (3) of the Act, and interfering with, restraining, and coercing Cook in the exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1) of the Act (R. 17, 22). Accordingly, the Board ordered respondents to cease and desist from violating Sections 8 (a) (1) and (3) and to remedy the unfair labor practice by making an offer of employment to Cook and compensating him for his lost earnings (R. 24–25). Although the Board specifically found that Cook had not removed himself from the labor market by logging his own land, it left for later compliance proceedings all questions as to the actual amount of back pay due him (R. 16–17,

24–25). The order also provides for the posting of the usual notices (R. 25–27).

ARGUMENT

I.

Substantial evidence on the record as a whole supports the Board's finding that the respondents discriminatorily refused to hire Cook in violation of Sections 8 (a) (3) and (1) of the Act

Phelps Dodge Corp. v. *N. L. R. B.*, 313 U. S. 177, 183–187, establishes that it is an unfair labor practice for an employer to refuse employment because of an applicant's past union or strike activities. The sole substantive issue in this case, therefore, is whether substantial evidence supports the Board's finding that Cook's strike activities played a part in respondent's refusal to employ him.

We submit that the record summarized above, fully supports the critical finding. Thus, according to Rawlins' testimony, respondent William Davisson admitted that he was unable to hire Rawlins "because of the strike," and that it appeared to Davisson "that they were trying to starve [Rawlins] and Mr. Cook out." On a later occasion when Cook unsuccessfully reapplied for a job, Davisson admitted that the "trouble" at Wilmac was the "whole damn thing." And in three separate conversations with Fred Roberts, Cook's brother-in-law, either Davisson or respondent Oscar Scherrer attributed their refusal to hire Cook to his union activity, Scherrer explicitly expressing the fear that Cook would foment a strike

among the crew, and the belief that Cook was an instigator of other strikes that had occurred.

Respondents as witnesses in their own behalf denied the damaging statements attributed to them. But the sole issue raised by such denials is one of credibility which it is the function of the Trial Examiner to resolve. Once such a resolution has been made, the reversal of such findings is foreclosed by this Court's "oft-repeated rule that questions of credibility are for the Trial Examiner who has had the opportunity to observe the demeanor of the witnesses," *N. L. R. B.* v. *West Coast Casket Co.,* 205 F. 2d 902, 907 (C. A. 9); see also *N. L. R. B.* v. *Swinerton,* 202 F. 2d 511, 514 (C. A. 9), certiorari denied, 346 U. S. 814; *Motorola, Inc.* v. *N. L. R. B.,* 199 F. 2d 82, 84–85 (C. A. 9), certiorari denied, 344 U. S. 913; *N. L. R. B.* v. *State Center Warehouse,* 193 F. 2d 156, 157 (C. A. 9); *Boeing Airplane Co.* v. *N. L. R. B.,* No. 13802, C. A. 9, Sept. 23, 1954.

The Board's finding that the refusal to hire Cook was discriminatorily motivated, is "strengthened by the fact that the explanation . . . offered by the respondent fails to stand under scrutiny." *N. L. R. B.* v. *Dant,* 207 F. 2d 165, 167 (C. A. 9). For instance, respondents claimed that they failed to hire Cook because they desired to eliminate the transportation problem involved in shuttling men from Granite Falls to the Sultan area where their lumbering operations were then conducted. But this transportation problem was no obstacle to respondents' hiring no less than five men from the Granite Falls area *after* they had refused or failed to hire Cook, particularly since

Cook offered to furnish his own transportation. Again, respondents claimed that Cook was not in the labor market, since he had purchased a donkey to log his own timber. But Davisson did not hesitate to offer employment to Rawlins after the other partners had cleared him, even though Rawlins at the very time of the offer was known to have participated in the purchase of the machine. Finally, when asked point blank during the hearing why Cook had not been hired, Davisson referred to an "agreement" or a "family relationship" among the heads of the lumber companies in the area whereby men carried on the roster of one company would not be hired away by another. But this proved to be no obstacle to the employment of Rawlins, who, like Cook, was on lay-off status from his last employer, who held no seniority with respondents (R. 76), and who was specifically apprised by Davisson that he would have to notify his former employer that he was quitting. Davisson admitted that he at no time so informed Cook. Thus, although respondents have advanced three superficially plausible reasons for their failure to hire Cook, respondents' own admitted conduct shows that none of these three reasons prevented them from hiring employees to whom any or all such reasons were equally applicable. The fact that there might have been adequate nondiscriminatory reasons for not hiring Cook of course makes no difference if these were not the moving cause. Cf. *Wells, Inc.* v. *N. L. R. B.*, 162 F. 2d 457, 460 (C. A. 9); *N. L. R. B.* v. *Ronney & Sons Furniture Mfg. Co.*, 206 F. 2d 730, 737 (C. A. 9), certiorari denied, 346 U. S. 937.

Lastly, respondents attempted to show that they could neither have discriminated against Cook, nor discouraged union membership by reason of such alleged discrimination, in view of the fact that all their employees were members of the Union; that one of the partners had encouraged a new employee to join the Union; that they had a contract with the Union; and that they themselves were past union members. As the court observed in *N. L. R. B.* v. *Nabors,* 196 F. 2d 272, 276 (C. A. 5), certiorari denied, 344 U. S. 865, "The fact that respondent retained some union members does not exculpate him from the charge of discrimination against those discharged (citing cases)." See also *N. L. R. B.* v. *Howell-Chevrolet Co.,* 204 F. 2d 79, 85 (C. A. 9), affirmed, 346 U. S. 482. Moreover, it is entirely possible not to be opposed to unions or to union members generally, and at the same time to discriminate against a particular union member who, as here, has singled himself out by his effective leadership within the Union, especially by what the respondents believed to be his responsibility for a prolonged strike at neighboring lumber camps with which they had close family connections. Clearly, the Act does not read so narrowly as to extend its protection only to inactive union members, but not to those who by their leadership make the Union an effective instrument of collective bargaining. Similarly, the absence of friction between respondents and rank-and-file union members does not preclude the Board's inference that discrimination against Cook tends to discourage less active members in assuming the initiative in exercising their rights

under the Act. The law is intended to protect effectual union membership as much as passive or ineffectual membership. Contrary to respondents' contentions, it is not necessary to show by specific evidence that the discriminatory failure to hire Cook discouraged membership in the Union, for the Board may draw such an inference from the very fact of the discrimination. *Radio Officers' Union* v. *N. L. R. B.*, 347 U. S. 17, 48–52; see also *N. L. R. B.* v. *J. G. Boswell Co.*, 136 F. 2d 585, 595–596 (C. A. 9).[8]

In short, the credited testimony supports the Board's finding that respondents' refusal to hire Cook was discriminatorily motivated, and the most that can be said of the various nondiscriminatory explanations put forward by respondents is that they permit of a contrary inference. In these circumstances "a court may [not] displace the Board's choice between two fairly conflicting views." *Universal Camera Corp.* v. *N. L. R. B.*, 340 U. S. 474, 488; *N. L. R. B.* v. *West Coast Casket Co.*, 205 F. 2d 902, 907 (C. A. 9); *N. L. R. B.* v. *Ronney & Sons Furniture Mfg. Co.*, 206 F. 2d 730, 737 (C. A. 9), certiorari denied, 346 U. S. 937.

[8] The Board also found that the discriminatory refusal to hire Cook interfered with, restrained, and coerced Cook in the exercise of rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1) of the Act. Under this theory, it need not be found that respondents' discrimination discouraged union membership. As the Board noted (R. 16), whether the discrimination violates Section 8 (a) (3) or 8 (a) (1), an offer of employment and compensation for lost earnings is the appropriate remedy. See *N. L. R. B.* v. *Buzza-Cardozo*, 205 F. 2d 889, 891 (C. A. 9), certiorari denied, 346 U. S. 923.

II.

The Board's procedure and order were valid and proper

Respondents, either before the Board or in their answer to the petition for enforcement, have raised several procedural contentions which require brief consideration.

1. Respondents objected to the failure of the Trial Examiner to strike the testimony of Delbert Rawlins, and in support of their objection claimed that Rawlin's testimony was incompetent, irrelevant, immaterial to any issue in the case, and prejudicial in character.

Rawlins was not named as a discriminatee in the charge or the complaint since he had rejected the respondents' offer of employment. He testified that respondent William Davisson told him respondents would not hire him (Rawlins) "because of the Union activity, because of that strike" and that Davisson added "it looked to him [Davisson] that they were trying to starve me [Rawlins] and Mr. Cook out" (R. 56, 57). This testimony is manifestly relevant to the question of respondents' motivation in denying employment to Cook.[9] Indeed, the statement attributed to Davisson is an admission, and is admissible as such. Moreover, even if the testimony related solely to Rawlins and not to Cook, it would be ad-

[9] In overruling respondents' first motion to strike Rawlins' testimony, the Trial Examiner stated at pp. 41–42 of the transcript, not reproduced in the printed record, that Rawlins' testimony would be admitted if it would "lead up to some conversations which will shed light on the issue of the refusal of employment to Alex Cook."

missible under the decisions epitomized in *N. L. R. B.* v. *National Seal Corp.*, 127 F. 2d 776, 778 (C. A. 2), that "when intent . . . is an issue it is always permissible . . . to show that the actor has been engaged in other similar transactions."[10]

2. Respondents objected to the exclusion of evidence in which they proposed to show that they at no time had discriminated against their employees because of union activity. In excluding testimony on this point, the Trial Examiner pointed out that there was no evidence showing any unfair labor practice except that relating to Cook, and that the absence of other unfair labor practices would have to be assumed (R. 83). Since the Trial Examiner assumed the existence of the very fact the respondents wished to prove by their excluded evidence, they were in no way prejudiced by the exclusion.

3. Respondents objected that the Board's order, requiring reinstatement of Alex Cook in a position he would have held had he been hired when first needed in 1953, violates the seniority provisions of their working agreement with the Union, and would prejudice the seniority rights of their employees. However,

[10] Respondents presumably rely on the so-called "rule of evidence" that actions of a person on a prior occasion cannot be used to show what happened on the occasion which gave rise to the legal controversy at issue. But this rule is inapplicable here, for the testimony of Rawlins illumines the *then current*, not merely the *future*, refusal to hire Cook. In any event, as Judge Goodrich stated for the Third Circuit, the so-called "rule" is "merely one of auxiliary policy to be called upon when the trial judge feels such evidence would unduly confuse the issue." *Moreau* v. *Pennsylvania R. Co.*, 166 F. 2d 543, 545, citing II Wigmore, Evidence, 3d Ed. 1940, Sec. 444.

since the employees whose seniority status might be affected would be given a status corresponding to that which they would have enjoyed absent respondents' illegal discrimination, they are not being deprived of their rightful seniority standing, but only of such advantages as may have accrued to them as a result of respondents' violation of the Act. As the Supreme Court has noted, the purpose of a Board order is the "restoration of the situation, as nearly as possible, to that which would have obtained but for the discrimination." *Phelps Dodge Corp.* v. *N. L. R. B.*, 313 U. S. 177, 194. To that end, the typical reinstatement order provides, as here, that employment must be offered to the discriminatee without prejudice to his seniority and other rights; and it is well settled that the Board is empowered to order the same remedial action where the discrimination has occurred in connection with the hire of new employees, as where it has occurred in connection with the discharge of old employees. *Id.* at pp. 187–189.

4. Respondents claim that the Board's petition for an enforcement decree is premature since no evidence was received relating to Cook's loss of earnings, and no determination made regarding the extent to which income from Cook's logging activity should be considered in the back pay calculations. Accordingly, respondents urge in their answer to the Board's petition that "before an order of enforcement is sought, the Board should be required and directed to determine the amount of back pay, if any" (R. 105). Since respondents made no timely objection before the Board regarding this purported defect or lack

of finality in the order recommended by the Trial Examiner they are precluded under Section 10 (e) of the Act from raising this contention for the first time before this Court. *Marshall Field & Co.* v. *N. L. R. B.*, 318 U. S. 253, 255; *N. L. R. B.* v. *Pinkerton Detective Agency*, 202 F. 2d 230, 233 (C. A. 9). At any rate, it is well settled that the appropriate procedure in this situation is for the Court to enter a decree enforcing the Board order although it fails to specify the amount of back pay due, leaving the calculation of such sum for later compliance proceedings. *N. L. R. B.* v. *Bird Machine Co.*, 174 F. 2d 404, 405–406 (C. A. 1); *Home Beneficial Life Insurance Co.* v. *N. L. R. B.*, 172 F. 2d 62, 63 (C. A. 4).

CONCLUSION

It is respectfully submitted that the Board's findings that respondents violated Sections 8 (a) (1) and (3) of the Act is supported by substantial evidence on the record considered as a whole, that its order is valid and proper in all respects, and that a decree should issue enforcing the order in full.

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
FREDERICK U. REEL,
PETER BAUER,
Attorneys.
National Labor Relations Board.

NOVEMBER 1954.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3).

Unfair Labor Practices

Sec. 8 (a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .

* * * * *

Prevention of Unfair Labor Practices

Sec. 10 (a). The Board is empowered, as hereinafter provided, to prevent any person

from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: . . .

* * * * *

(c) . . . If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: . . .

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of

the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. . . .

* * * * *

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